

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

August 7, 2007

Dear Xxxxx:

This letter is in response to your letter dated April 18, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our company is a STATE corporation that rents trucks and trailers to the movie and television production industry. We may be renting to a production company that will be filming in Illinois. We would like to know of any taxes that our company should charge the customer, such as sales or use tax, rental tax, etc.

We contacted the Illinois Department of Revenue, but they were unable to answer this question and we were told to send a letter to your office. Please send a reply to: .....

## **DEPARTMENT'S RESPONSE**

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

If the contract involved is a true lease the lessee is not subject to Retailers' Occupation Tax or Use Tax on the lease of a vehicle for more than one year. As a result, the lessee is not subject to sales tax liability for any related lease charges such as late charges, vehicle disposal fees, excess wear and tear fees and excessive mileage fees imposed at the end of the lease are not subject to tax.

If the transaction is a conditional sale, please see 86 Ill. Adm. Code 130.420 and 130.410, the Department's rules regarding finance charges, penalties, discounts, and costs of doing business.

Please note that in Illinois, under the Use Tax Act, persons who purchase tangible personal property from out-of-State retailers, and either ship or bring that property into Illinois would incur Use Tax liability. The purchaser must self assess the tax and remit it directly to the Department of Revenue. The purchaser would get credit against his or her Illinois Use Tax obligations for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310(a)(3).

Also, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. (35 ILCS 120/2-5(12)) In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. (35 ILCS 120/2-5(13)).

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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